

REMARKS

Claims 1-15, 19, 20 and 25-27 are pending in the application.

Claims 1-7, 10-15, 19, 20 and 25-27 have been rejected under 35 USC 103(a) as allegedly being obvious over US Published Application US 2002/0009061 (hereinafter “Willenegger”) in view of US Patent 6,862,449 (hereinafter “Mohebbi”).

Claims 8 and 9 have been rejected under 35 USC 103(a) as allegedly being obvious over Willenegger in view Mohebbi and further in view of US Patent 6,385,462 (hereinafter “Baum”).

Applicants respectfully traverse the rejections in accordance with the detailed arguments set forth below.

It is respectfully submitted that Willenegger is an improper reference. The present application claims the benefit of foreign priority to applications filed February 15, 2001 and January 13, 2001.

Willenegger has a filing date of February 15, 2001. In order to be a proper reference the invention must be described in a patent publication, by another, filed in the United States before the invention thereof by the applicant for patent. As the Willenegger filing date does not predate applicants' priority date, Willenegger (2002/0009061) is an improper reference.

While Willenegger does claim the benefit of a provisional application, there is no showing in the Office Action that this “Willenegger” provisional application properly supports the subject matter used to make the rejection in compliance with 35 U.S.C. 112, first paragraph. According to the MPEP, when taking into consideration any proper benefit claims to prior U.S. applications under 35 U.S.C. 119(e) or 120 the prior application must properly support the subject matter.

Applicants respectfully request that, to maintain this rejection, the “Willenegger” provisional application be cited together with a showing of support with regard to the features relied upon in rejecting applicants’ invention.

Furthermore, applicants’ claim 1 includes the features of: “said closed-loop power control means being utilized to select a subset of primary stations greater than one primary station, selected from the plurality of primary stations, for the transmission of data over at least one data channel between the selected subset of primary stations and the secondary station.”

In applicants’ invention the closed-loop power control is utilized to select, for example, the active set of Base Stations in a handover (page 5, line 28 to page 6, line 17). As described in applicants’ specification, for example, page 5, line 22 to page 6, line 17, this provides an advantage in that a separate message need not be sent to indicate the channel conditions.

In the Office Action, page 3, it is admitted Willenegger fails to teach or suggest such a feature as recited in claim 1. It is argued in the Office Action that Mohebbi teaches such a feature at cols. 6, 16 and 17. Applicants disagree because Mohebbi fails to suggest using the closed-loop power control as claimed by applicants.

In fact, Mohebbi clearly describes, in cols. 6, 16 and 17, using the RSS, “possibly together with the SIR” to select the BTS (col. 17, lines 1-7). Then a BTS selection message is sent “identifying the BTS(s) to be used” (col. 17, lines 25-35, emphasis added). There is nothing whatsoever to suggest using the Transmit Power Control as claimed in applicants’ claim 1.

There is no suggestion at all in any of the cited references to support the Office’s position that a closed-loop power control being utilized to select a subset of primary stations ..., as claimed in claim 1.

For at least the foregoing reasons, it is respectfully submitted the Office's position is not supported by the combination of references, thus the rejection should be withdrawn.

### **Claims 6, 10 and 20**

Applicants' independent claims 6, 10, and 20 are directed to different embodiments of the invention. However, the Office Action again argues, for each claim, that Mohebbi teaches the features, as discussed above, using substantially identical arguments as set forth in claim 1.

Applicants respectfully disagree and essentially repeat the above arguments set forth in claim 1. There is no suggestion in the combination of references that closed-loop power control can be utilized as claimed in each of these independent claims, thus the rejections should be withdrawn and each of the independent claims allowed.

### **Dependent Claims**

For each dependent claim applicants essentially repeat the above arguments as set forth in claim 1 and respectfully submit that these claims are allowable by virtue of their dependency, as well as the additional subject matter recited therein and not shown in the combination of references (including the Baum reference). Thus the rejections should be withdrawn and each of the dependent claims allowed.

### **Conclusion**

An earnest effort has been made to be fully responsive to the Examiner's correspondence and advance the prosecution of this case. If there are any questions, the Examiner is respectfully requested to call the undersigned attorney at the number listed below. While it is believed no fee

is due, please charge any additional fees associated with this application to Deposit Account No.

14-1270.

Respectfully submitted,



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